WILLIAM DUNN

IBLA 2002-95 Decided October 30, 2002

Appeal of a decision by the Oregon State Office, Bureau of Land Management, declaring mining claim null and void ab initio, in part. ORMC 155377.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

2. Withdrawals and Reservations: Effect of

   Land orders segregating public lands issued prior to the effective date of FLPMA remain in full force and effect unless the lands are officially reopened to appropriation under the public land laws, or they are subject to a term of renewal and are not renewed.

3. Mining Claims: Placer Claims

   Lands within a placer mining claim must be contiguous.

4. Mining Claims: Placer Claims

   A mining claim located on lands partially closed to entry under the mining laws is null and void ab initio to that extent. If a placer claim containing noncontiguous parcels has been located, BLM may require the claimant to identify a part of the claim that it wishes to maintain subject to

> the rules of discovery. Should the claimant so desire, it may relocate, as separate claims, remaining noncontiguous parcels, if the land remains open to location.

APPEARANCES: William Dunn, Portland, Oregon, pro se; Mariel J. Combs, Esq., Office of the Regional Solicitor, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

William Dunn appeals from an October 18, 2001, decision of the Oregon State Office, Bureau of Land Management (BLM), Portland, Oregon, declaring Dunn's Coos Head PMC mining claim, ORMC 155377, null and void ab initio, in part. 1/ BLM's decision declared portions of the claim null and void ab initio because they are located on lands withdrawn from mineral entry by an 1884 Executive Order (1884 EO) issued by President Chester Arthur. Dunn maintains that the Coos Head PMC mining claim is entirely located on lands which were reopened to mineral entry in 1983 by Public Land Order (PLO) 6429. For reasons set forth below, we affirm BLM's decision.

Background

Dunn located the Coos Head PMC placer mining claim on July 15, 2000. He filed a location notice for the claim with the county clerk of Coos County, Oregon, on August 29, 2000, and a copy with BLM on September 11, 2000. The location notice describes the location of the claim as follows:

> [C]ontaining 103 acres (+ or -), described and marked upon the ground and designated in the public surveys and field notes and plats thereof as the Lot 1 (excluding QCD [quitclaim deed] from US OR5637), W½W½ SW¼NW¼ Section 2; and Lot 1, Lot 2, SE¼NE¼ Section 3, T. 26 S., R. 14 W.[,] W.M. [Willamette Meridian] Coos Co.[,] Oregon.

(Emphasis omitted.) The notice of location lists six owners.

1/ On Mar. 16, 2001, BLM issued a decision declaring the claim null and void ab initio, in part, on grounds that Dunn had partially located the Coos Head claim on lands withdrawn from mineral entry prior to location. Dunn appealed that decision to the Board in a case docketed as IBLA 2001-253. BLM requested the Board to remand its original decision for further action. The Board did so by order of Jul. 3, 2001. On Aug. 3, 2001, Dunn objected to the remand and asked the Board to decide the matter on the merits. Having remanded the matter to BLM, the Board considered Dunn's request as one for reconsideration, and denied it on Sept. 12, 2001. On remand, BLM rescinded its March 2001 decision and on Oct. 18, 2001, issued the decision on appeal. To the extent Dunn requests in this appeal that the Board revisit the prior remand, we find no reason to do so.

The claim is located on "Coos Head," an area jutting into Coos Bay on Oregon's coast. The Coos Head shoreline fans out into the water like a ragged-edged half-circle, fronting the Pacific Ocean to the west, Coos Bay to the north, and the mouth of the South Slough to the east. The boundary between secs. 2 and 3, T. 26 S., R. 14 W., roughly bifurcates Coos Head on a north-south axis, with lands in sec. 3 lying to the west of those in sec. 2.

Conceptualizing the Coos Head shoreline as a half-circle, the Coos Head PMC comprises roughly the northwest quarter-circle or the western half of Coos Head. The claim's eastern boundary approximately bisects Coos Head at its north/south axis, along a line slightly to the east of and parallel to the section line separating secs. 2 and 3. The bulk of the Coos Head PMC mining claim thus lies within sec. 3, though the easternmost edge of the mining claim lies within sec. 2.

A portion of the land within the contours of the mining claim which BLM asserts is segregated from mineral entry is a triangular area labeled as OR 19227 and 19227A. It is clearly depicted on the December 16, 1998, Master Title Plat (MTP) for T. 26 S., R. 14 W., Willamette Meridian. The Coos Head PMC mining claim comprises about 103 acres; OR 19227A is listed by BLM as containing 43.38 acres. The triangle intersects the boundaries of the mining claim at its northwestern and eastern angles, but the third angle extends down to the southwest without intersecting the southern claim boundary. This means that, by intersecting two boundaries of the mining claim, excluding the triangle from the claim bifurcates the claim into a small northern portion and a larger southern portion. The MTP also identifies smaller notations indicating reservations of land within the Coos Head PMC mining claim. OR 4011 is noted on the MTP as a reservation on the northernmost tip of Coos Head; OR 34793 is located on a jetty out of the northwest corner.

By Executive Order (EO) dated July 14, 1884, President Arthur withdrew Coos Head from the public domain "for the improvement of the entrance to Coos Bay and Harbor," and granted the Secretary of War jurisdiction to manage the area. The 1884 EO withdrew lots 1, 2, 3, and SW¼NW¼ sec. 2, and lots 1, 2, and SE¼NE¼ sec. 3. 2/

On January 18, 1932, the Secretary of War conveyed lands within sec. 2 (portions of lots 1, 2 and 3, and the SW¼NW¼), to the University of Oregon, as authorized by Congress on March 3, 1931. See BLM Ex. C and Dunn Ex. 4, 46 Stat. 1506-07 (Mar. 3, 1931). By a 1932 quitclaim deed, serialized as OR 5637, the Secretary of War conveyed "all of Lot 2, the westerly seven hundred fifty feet of lot 3, all of lot 1 except the west three hundred feet thereof, all in section 2 * * *," excluding two small parcels released to the Treasury Department by letter of the Assistant

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2/ According to an undated chronology, BLM Exhibit (Ex.) P, the acreage in the original reservation totaled approximately 212.42 acres. See also "Withdrawal Review - U.S. Navy, EO 7-14-1884, South Head (Coos Head), Coos Bay" (undated).

Secretary of War dated April 24, 1913. 46 Stat. 1507. One of the two excluded parcels contained approximately 3 2/3 acres (3.673 acres) for "station buildings," located at the northernmost point of section 2. This parcel was placed under jurisdiction of the Coast Guard "for lifeboat station and housing." (Undated "Withdrawal Review," by the U.S. Navy.) 3/

On January 20, 1936, Congress authorized a second conveyance in sec. 2 to the University of Oregon. See BLM Ex. D, 49 Stat. 1095 (Jan. 20, 1936). By quitclaim deed dated June 30, 1941, serialized as OR 5900, the War Department deeded to the University of Oregon the rest of lot 3, sec. 2, containing 12.80 acres.

On November 27, 1956, the Department of the Army transferred management of the remaining 134.2 acres of the 1884 Coos Head reservation lands to the Department of the Navy, subject to a reservation of 8.2 acres in Lot 1, sec. 3, for a construction staging area and access thereto. (BLM Ex. E.) 4/ According to the Army, in 1956 the 1884 reservation encompassed 134.2 acres, described as follows:

> The west 300 feet of Government Lot 1 and the west 300 feet of the southwest quarter of the northwest quarter of section 2; Government Lots 1 and 2 and the southeast quarter of the northeast quarter of Section 3; all in Township 26 South, Range 14 West of the Willamette Meridian, situate in Coos County, State of Oregon, containing 134.2 acres, more or less.

(Memorandum of Transfer by the Secretary of the Army dated Nov. 27, 1956, Incl. 1.) 5/

The lands remaining subject to the 1884 withdrawal but in the control of the Navy were serialized OR 19227 during a "withdrawal review inventory

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3/ The other excluded parcel had a subsequent history not relevant here, in that it was located within the boundary of the land transferred to the University of Oregon and does not overlap with the Coos Bay PMC mining claim.

4/ This area is now managed by the Army Corps of Engineers (Corps), pursuant to right-of-way OR 34793, granted July 7, 1982, by a BLM decision approving a reservation in perpetuity for the Corps. (Historical Index for T. 26 S., R. 14 W., Willamette Meridian (Historical Index), p. 11.

5/ The 134.2 acres transferred to the Navy contained approximately 105.18 acres of fast land remaining from the original withdrawal, less approximately 8.2 acres that the Army reserved, plus approximately 35 acres of accreted land. See also "Withdrawal Review - U.S. Navy, EO 7-14-1884, South Head (Coos Head), Coos Bay" (undated) at 2. BLM cites the acreage of fast land as 104.68 acres. (Answer at 3.)

of October 21, 1976." This inventory listed the withdrawn lands as containing 105.18 acres of fast land originally covered by the land description in the 1884 EO, and additional acres of accreted lands.

By 1977, the Navy had begun to explore the notion of relinquishing 90.36 acres of land subject to the original 1884 withdrawal. On August 11, 1977, the Navy prepared a Notice of Intent to relinquish that acreage, and forwarded it to BLM. The proposed relinquishment was under some discussion until 1983, as a result of the Navy's desire to retain certain uses within the 90.36 acres. By letter dated January 12, 1983, the Navy responded to a BLM letter regarding "OR 19227 2330" in which BLM had "advised that to effect the relinquishment it would be necessary to accept right-of-way reservations * * *." (BLM Ex. H, Jan. 14, 1983, U.S. Navy Letter to BLM.)

Consistent with this letter, on March 1, 1983, BLM approved reservations for the Department of the Navy of five rights-of-way across the "right-of-way reservation" of approximately 90.36 acres. (BLM Ex. F, Mar. 3, 1983, BLM Decision.) This decision was approved by the Department of the Navy as well as BLM, and was expressly conditioned on an anticipated, future revocation of portions of the 1884 EO withdrawal (OR 19227). It stated:

> TO HAVE AND TO HOLD said right-of-way unto the Department of the Navy for a term commencing on the effective date of the pending public land order that will partially revoke the withdrawal made by [the 1884 EO] as to approximately 90.36 acres of land relinquished by the Navy, and continuing until terminated by agreement between the Bureau of Land Management and the Department of the Navy.

Id. at 2 (emphasis added). The right-of-way reservation was serialized as OR 35002. Id. at Exhibit A. The rights-of-way pertained to cable lines and roads across the 90.36 acres that the Navy and BLM anticipated the Navy would release.

The anticipated partial revocation occurred on July 21, 1983. BLM published PLO 6429 in the Federal Register to revoke the 1884 EO "as to 90.36 acres of land withdrawn for use by the Navy Department as a naval facility," and restored that acreage to "location and entry under the United States mining laws." See BLM Ex. G, Dunn Ex. 2, 48 FR 33299 (July 21, 1983). The lands opened by PLO 6429 were:

> T. 26 S., R. 14 W.,
> Sec. 2, those portions of lot 1 and the SW¼ NW¼
> as delineated upon the official records of the Oregon
> State Office, Bureau of Land Management;
> Sec. 3, those portions of lots 1, 2, SE¼NE¼ and
> unsurveyed accretions thereto as delineated upon

> the official records of the Oregon State Office,
> Bureau of Land Management.

Id.

On September 28, 1983, the Department of the Navy published a "Proposed Continuation of Withdrawal" regarding OR 19227 "that the existing land withdrawal made by [the 1884 EO] be continued in part for a term of 100 years." (Dunn Ex. 11, 48 FR 44674 (Sept. 28, 1983).) The notice stated that the "land involved" totaled "41.41 acres within Sections 2 and 3 of T. 26 S., R. 14 W., Willamette Meridian, Coos County, Oregon." It provided that the "final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until * * * final determination is made." Id.

On June 19, 1986, the Coast Guard published a notice in the Federal Register, serialized as OR 4011, proposing to continue, for a period of 25 years, its withdrawal of 6.10 acres on Coos Head pursuant to the 1884 EO, "near sec. 2." 51 FR 22362 (June 19, 1986). This notice pertained to the 3.673 acres excluded from the 1932 quitclaim deed OR 5637 for use by the Coast Guard and an additional 2.4 acres located on the northern tip of lot 1, sec. 3, designated on the MTP as OR 4011. The June 19, 1986, notice indicated that these lands would remain closed to surface entry and mining. It provided that the "final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until * * * final determination is made." 51 FR 22362.

On October 9, 1989, the Navy transferred lands within OR 19227 to the Air Force, specifically, "43.38 acres of withdrawn public domain land" originally withdrawn by the 1884 EO. (BLM Ex. I.) The transfer reserved "2.43 acres in fee and a .25 acre easement area" for a Navy building and access thereto. The 2.43 acres reserved by the Navy continued under BLM Serial No. OR 19227; lands transferred to the Air Force were assigned Serial No. OR 19227A, and identified as containing 39.98 acres. (Historical Index p. 11.)

On June 13, 1991, the Air Force proposed that the "existing land withdrawal made by the [1884 EO] be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714." See BLM Ex. J, 56 FR 27268-69 (June 13, 1991). This notice also provided that the "final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made." Id.

Dunn located the Coos Head PMC mining claim on July 15, 2000. The mining claim description covered lands in secs. 2 and 3 declared unreserved by PLO 6429. It also embraced lands within OR 19227, OR 19227A, OR 34793, and OR 4011. The record reveals that Dunn was fully aware that the MTP depicted these land withdrawals at the time he located the mining claim.
In a cover letter submitted to BLM with the Notice of Appeal, Dunn stated

to BLM that "when you review the existing [MTP], of sections 2 & 3, T. 26 S., R. 14 W., WM * * * it appears that the land is currently withdrawn from mineral entry by [the 1884 EO]. That is not the case." (Sept. 11, 2000, Dunn letter to BLM.) Dunn proceeded to explain his view that the 1884 EO was superceded by PLO 6429, 48 FR 33299 (July 21, 1983). According to Dunn this PLO opened all of the subject lands to mineral entry. (Sept. 11, 2000, Dunn letter to BLM.)

On August 10, 2000, BLM proposed, inter alia, to segregate for potential withdrawal approximately 102.7 acres within fractional Lot 1 and fractional SW¼ NW¼, sec. 2, and lots 1 and 2 and the SW¼ NE¼, sec. 3, T. 26 S., R. 14 W., "to protect wildlife habitat, wetlands, recreational values and portions of lands identified for future community expansion." (BLM Ex. M, 65 FR 49010 (Aug. 10, 2000); see also 61 FR 47954 (Sept. 11, 1996). This proposed withdrawal essentially embraced all of the Coos Head PMC previously located on July 15, 2000. On October 13, 2000, BLM published a notice to correct an omitted date in the August 10, 2000, notice, and to clarify that the proposal was effective on the date of publication. (BLM Ex. M, 65 FR 60973 (Oct. 13, 2000).)

In his Statement of Reasons on appeal (SOR) and Response, Dunn claims that PLO 6429 opened to mineral entry all lands encompassed by his mining location. Dunn alleges that transfers of lands within the Coos Head PMC between departments of the military were also unlawful because they were not proper uses of federal authority under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, 40 U.S.C. § 472 (2000). Dunn further asserts that there are inaccuracies in various acreage amounts identified in the assorted public notices impacting Coos Head.

BLM responds that the claim is null and void ab initio to the extent lands at issue remain withdrawn under the 1884 EO. (Answer at 7-9, 6-7.) Because the claim is invalid as to the withdrawn lands, BLM maintains, the resulting valid location contains two non-contiguous parcels. (Answer at 9-10.) BLM contends that the mining law does not permit a single placer location to include non-contiguous parcels, and asserts it has followed proper procedures in granting appellant the opportunity to amend the notice of location. (Answer at 10.)

Analysis

[1] Any question of which land remained open to mining claims at the time the Coos Head PMC mining claim was located is resolved by application of the well-settled notation rule. That rule establishes that where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land restored to entry, even if the original notation was made in error. Betty J. (Thompson) Bonin, 151 IBLA 16, 29 (1999), citing Shiny Rock Mining Corp. v. Hodel, 825 F.2d 216, 219 (9th Cir. 1987); B.J. Toohey, 88 IBLA 66, 77-85, 92 I.D. 317, 324-28 (1985), aff'd sub nom. Cavanagh v. Hodel, No. A86-041 Civil (D. Alaska Mar. 18, 1988); Carmel J. McIntyre (On Judicial Remand), 67 IBLA

317, 327 (1982); California and Oregon Land Co. v. Hulen and Hunnicut, 46 L.D. 55, 57 (1917); see also D. Stone Davis D/B/A Daisy Trading Co., 155 IBLA 133, 135 (2001), citing O. Glenn Oliver, 73 IBLA 56, 59 (1983); Paiute Oil & Mining Corp., 67 IBLA 17, 19-20 (1982).

The December 16, 1998, MTP clearly depicts as reserved a large triangular-shaped area with the notations "OR 19227 EO 7/14/1884 Wdl USN" and "OR 19227A EO 7/14/1884 Wdl USAF." It also depicts lands reserved under the notations "OR 4011 EO 7/14/1884 Wdl USCG," on the northern tip of Coos Head, and "OR 34793, C of E jetty" on the northwest tip into the ocean. These notations lie squarely within the area Dunn described in the Coos Head PMC notice of location. The public land records clearly indicated that the lands within those designations were not open to appropriation under the mining laws when Dunn attempted to locate the Coos Head PMC.

Application of the notation rule also resolves Dunn's claims of a 1.97 acre discrepancy between the 1983 notification of continuation of the withdrawal of 41.41 acres (Dunn Ex. 11, 48 FR 44674 (Sept. 28, 1983)), and the 1989 transfer from the Navy to the Air Force of 43.38 acres in lands designated as OR 19227A. (SOR at 5-6.) The discrepancy must be resolved by BLM on the basis of the MTP, but the fact that the two agencies did not precisely agree on acreage does not alter the effect of the notation rule or invalidate the 1884 withdrawal. Likewise, the notation rule resolves Dunn's complaints against the transfers of land between the various military agencies under the Federal Property and Administrative Services Act of 1949.

[2] Notwithstanding the above explanation of the notation rule, Dunn nonetheless attempts to bring this case into a rule discussed in Richard Bargen, 117 IBLA 239, 243-44 (1991), by arguing that the relevant notations to the 1998 MTP constituted applications to segregate lands under FLPMA section 204(b), 43 U.S.C. § 1714(b) (1994), rather than reservations which continued from the original 1884 land withdrawal. Thus, Dunn contends that each of the four notations regarding the reservations expired as temporary Department of the Interior segregations under FLPMA. His appeal proceeds under the notion that the publication of PLO 6429 and all subsequent land orders relating to the lands within the Coos Bay PMC mining claim were applications to segregate lands under section 204(b), which would expire under the statute within two years, or conversely, constituted revocations of the 1884 EO withdrawal. Each premise is incorrect.

By contrast with the continuing 1884 Executive Order in this case, Bargen involved a withdrawal enacted by Congress which stated a date certain on which it would expire and provided that only Congress could renew it. Based upon its own regulation at 43 CFR 2091.5-6(a), BLM had concluded that, "although the land was no longer withdrawn the 'land remained closed to the operation of the * * * mining laws, because no opening order had been issued'" in the Federal Register. 117 IBLA at 242-43. The Board reversed, concluding that "the provision for publication in the Federal Register of an order opening the lands does not come into play because Congress specifically stated in the statue the date on which the withdrawal terminates." Id. at 243. In reaching this conclusion, the Board also

relied on section 204(j) of FLPMA, 43 U.S.C. § 1714(j)(1994), which provides that the Secretary shall not modify a withdrawal created by an Act of Congress. 117 IBLA at 243.

In reaching this conclusion, the Board relied on earlier Board decisions in which BLM had attempted to apply the notation rule to extend "the conclusive effect of the statutory term of the withdrawal." 117 IBLA at 243. Referring to the two-year segregative effect of a Secretarial publication of an application for a withdrawal in the Federal Register, under the terms of section 204(b) of FLPMA, 43 U.S.C. § 1714(b)(1994), the Board stated that absent a final decision to implement the withdrawal or reject the application, FLPMA provides that the segregative effect expires two years from the date of publication in the Federal Register. Thus, in Bargen, we explained those cases:

> BLM erred when it applied the notation rule to extend the segregative effect of a withdrawal application beyond the 2-year limit provided by Congress and rejected mining claims located after the statutory expiration of the withdrawal. David Cavanagh, 89 IBLA 285, 300-302, 92 I.D. 564, 573 (1985); see B.J. Toohey, 88 IBLA 66, 95-97, 92 I.D. 317, 334-35 (1985).

Richard Bargen, 117 IBLA 239, 243 (1991). The three cases thus clarified that, where Congress expressly establishes a date by which a withdrawal or its segregative effect is to expire, the notation rule does not extend that date. By contrast, the 1884 Presidential withdrawal at issue here contains no such expiration term, Congressional or otherwise. 6/

Nor does anything in Bargen suggest that the 1884 Presidential withdrawal was controlled by FLPMA section 204(b). As discussed in Bargen, section 204 of FLPMA altered procedures by which the Department could effectuate withdrawals and reservations after its enactment on October 21, 1976. The statute permits the Secretary of the Interior to make, modify, extend or revoke withdrawals of land. 43 U.S.C. § 1714(a) (1994). Subsection (b) ensures that if the Secretary proposes a withdrawal on his own motion, the segregative effect of the proposed withdrawal must terminate at the time the application for withdrawal is decided or within two years of the proposal. 43 U.S.C. § 1714(b) (1994).

However, FLPMA contained a savings provision which maintains withdrawals that pre-date its passage. Section 701(c) of FLPMA, 90 Stat.2786 (1976), provided that "[a]ll withdrawals, reservations, classifications, and designations in effect as of * * * October 21, 1976[,] * * * shall remain in full force and effect until modified under the provisions of this Act or other applicable law." 43 U.S.C. § 1701 (note)(1994); see also 43 CFR 2300.0-3(b)(5) (same). Thus, land orders segregating public lands issued prior to October 21, 1976, remain "in full force and effect,"

6/ Notably, all three cases upheld the continued viability of the notation rule. Richard Bargen, 117 IBLA at 244-45; David Cavanaugh, 89 IBLA at 293; B.J. Toohey, 88 IBLA at 78.

unless the lands are officially reopened to operation of the public land laws, or unless they are subject to a term of renewal and are not renewed. See 43 U.S.C. § 1714(f) (1994). When lands are withdrawn from entry under some or all of the public land laws, and the withdrawal does not terminate on its own terms, the withdrawal remains in effect until there is a formal revocation or modification published in the Federal Register. E.g., Chanley Christensen, 149 IBLA 22, 28 (1999); Harry E. McCarthy, 128 IBLA 36, 41 (1993); Resource Associates of Alaska, 114 IBLA 216, 220 (1990).

Dunn's attempt to convert the prior 1884 EO into a section 204(b) Secretarial segregation ignores this FLPMA savings provision. The Coos Head River and Harbor Reservation is the result of an Executive Order which contains no term of renewal; it is not subject to a renewal procedure, and, theoretically, it could exist in perpetuity, unless revoked. See, e.g., David E. Hoover and Lester F. Whalley, 99 IBLA 291, 293 (1987); John F. and Vickie L. Malone, 89 IBLA 341, 342 (1985). PLO 6429 did not purport to revoke, modify or terminate the 1884 withdrawal except as to the 90.36 acres for which it expressly stated a revocation. Thus, to the extent Dunn argues that PLO 6429 somehow constituted a section 204(b) application of the Secretary of the Interior which terminated within two years, he misconstrues the above authority.

Dunn also errs in arguing that PLO 6429 reopened all lands withdrawn by the 1884 EO to entry under the public land laws. Acknowledging that the 1983 PLO 6429 revoked the withdrawal only to the extent of 90.36 acres "as delineated upon the official records of the Oregon State Office, Bureau of Land Management," 48 FR 33299, he argues nonetheless that PLO 6429 must have included at least the lands within the triangle identified as OR 19227 and 19227A and that the:

> conundrum is that the applicable Master Title Plat (MTP) shows an irregular shaped parcel of land within the aforesaid legal descriptions, said by the * * * BLM to contain 41.41 acres, which BLM asserts remains segregated under the original 1884 withdrawal.

(SOR at 1; emphasis supplied.)

Dunn has misinterpreted the plain terms of PLO 6429. PLO 6429 was conditioned on notations listed on the official records in the BLM Oregon State Office. As OR 19227, OR 19227A, OR 34793 and OR 4011 were all duly noted, those lands have been closed to appropriation under the mining law since July 14, 1884. 7/ Dunn's "conundrum" exists only if one ignores the condition in PLO 6429 which effectively acknowledged the withdrawals still remaining in effect at Coos Head, as noted on BLM official records.

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7/ OR 34793 encompasses the Corps of Engineers jetty, and OR 4011 is the Coast Guard property on the northen tip of Coos Head.

[3] Dunn argues that the Decision is incorrect insofar as it finds that the Coos Head PMC mining claim has been divided into two non-contiguous parcels, and that he must choose between them. Lands within a placer mining claim, whether an individual claim or an association claim, must be contiguous. 30 U.S.C. § 36 (2000); Melvin Helit, 147 IBLA 45, 48 (1998), citing Stenfjeld v. Espe, 171 F. 825 (9th Cir. 1909); Raymond A. Naylor, 136 IBLA 153 (1996); James Aubert, 130 IBLA 50 (1994); Tomera Placer Claim, 33 L.D. 560 (1905). In Helit, the Board held that the claimant may be offered the opportunity to identify that part of the claim which contains a discovery as the amended location and "should the claimant so desire and the land remain open to location, to relocate, as separate claims, the remaining noncontiguous parcels." Melvin Helit, 147 IBLA at 49, citing R.J. Collins, 140 IBLA 394 (1997); Raymond Naylor, 136 IBLA at 153; Jesse R. Collins, 127 IBLA 122 (1993).

Dunn contends that all lands within his claim would be contiguous had BLM properly credited his location with all accreted lands. The premise behind this assertion is that PLO 6429 somehow revoked the 8.2-acre withdrawal for a jetty for the Corps of Engineers, identified as OR 34793, such that Dunn may claim that the land on the jetty connects the two parcels remaining. (SOR at 7.) As noted above, this contention is entirely defeated by the notation rule. Likewise, it is defeated by the plain language of PLO 6429 which states that accreted lands in sec. 3 are opened "as delineated upon the official records." As OR 34793 fronts the northwest coast of Coos Head, its withdrawal is delineated on the official records to clearly separate the two remaining sections of the Coos Head PMC mining claim.

[4] A mining claim located on land closed to entry under the mining laws confers no rights to the locator and is properly declared null and void ab initio. William H. Shepherd, 157 IBLA 134, 136 (2002). In Daddy Del's L.L.C., 151 IBLA 229, 233 (1999), the Board noted the settled principle that "a mining claim located on lands which are closed to entry under the mining laws is null and void ab initio. William J. Pepper, 145 IBLA 278, 279 (1998); John C. Heter, 143 IBLA 123, 124 (1998)." See also R.J. Collins, 140 IBLA 394, 395 (1997). Thus, we affirm BLM's conclusion that the Coos Head PMC mining claim is void ab initio to the extent it was located on withdrawn lands. BLM's order states the following:

> Since you have located prior to the proposed [2000 segregation] you still have a valid claim on part of the area. However, you will need to amend your location notice and drop the part of the claim that is highlighted on the enclosed MTP. Since the two remaining parcels are non-contiguous, a choice would have to be made as to which parcel you want to retain under the original location notice dated July 15, 2000. The other parcel would not be open for a new location because of the two year proposed withdrawal effective August 10, 2000.

(Decision at 2.) 8/ See also Robert Gassaway, 150 IBLA 258, 269 (1999) (written statement of claimant's intent to abandon a portion of mining claim is sufficient).

We note that BLM's assertion that neither parcel is open for a new location is true only insofar as the land within the non-contiguous parcels is segregated by the Secretary under section 204(b) of FLPMA. A "relocation" is "the establishment of a new mining claim" and does not relate back to the date of an original location notice. 43 CFR 3833.0-5(q). Whether or not Dunn would be permitted to "relocate" a mining claim on a remaining parcel depends on whether the land is subject to a segregation or intervening land order or notice.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Lisa Hemmer
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

8/ As we have noted above, the Aug. 10, 2000, Federal Register notice, as amended, withdrew all lands within the Coos Head PMC from mineral entry for a period of two years, effective Aug. 10, 2000.